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Supreme Court of the United States

OCTOBER TERM, 1965.

No. _____ Original.

STATE OF OHIO,

Plaintiff,

vs.

STATE OF KENTUCKY,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Ohio by its Attorney General, asks leave of the Court to file its complaint against the State of Kentucky submitted herewith.

WILLIAM B. SAXBE,
Attorney General of Ohio.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. _____, Original.

STATE OF OHIO,

Plaintiff,

vs.

STATE OF KENTUCKY,

Defendant.

COMPLAINT

COMES NOW, the State of Ohio by and through its Governor and Attorney General and brings this action against the State of Kentucky and for its cause of action states:

1. The jurisdiction of this Court is invoked under Clause 2, Section 2, Article III of the Constitution of the United States and under Section 1251 (a) (1), Title 28, United States Code.

2. The plaintiff since the 1st day of March, 1803, to the present has been a State of the United States.

3. The defendant since the 1st day of June, 1792, to present has been a State of the United States.

4. The State of Ohio was established from the land ceded by legislative act of the Commonwealth of Virginia to the United States on the 1st day of March, 1784, which act is known as the Cession of Virginia.

5. The State of Kentucky was established by the separation of the District of Kentucky from the jurisdiction of the Commonwealth of Virginia pursuant to that certain act of the Virginia Legislature entitled "An Act concerning the erection of the district of Kentucky into an independant state", passed on the 18th day of December, 1789, which act is known as the Virginia-Kentucky Compact.

6. The northern boundary line of the State of Kentucky was established from the Cession of Virginia and the Virginia-Kentucky Compact as the low water mark on the northerly side of the Ohio River as it existed in the year 1792.

7. Pursuant to the terms of the Virginia-Kentucky Compact, jurisdiction over the Ohio River was established as being concurrent between the states possessing the opposite shores of the river.

8. In the years of 1836 to 1906 the United States Government, acting through the Corps of Engineers of the Army, made a comprehensive, reliable, and monumented survey of the Ohio River, establishing the low water marks of the river. Later, the United States Government again acting through the Corps of Engineers of the Army, erected dams in the Ohio River for navigational purposes, during the period of 1910 to 1929. From 1955 to the present the United States Government using the Corps of Engineers of the Army, has been replacing the earlier dams with new dams which are higher and achieve better navigational conditions.

9. The original dams caused the waters of the Ohio River to rise and permanently inundate various areas of both states. The new dams are causing much greater areas of both states to be permanently inundated by the Ohio River. As a result, the shores or banks of the Ohio River

charts numbered 13 through 136 based on the surveys made in 1896 to 1906.

3. The State of Ohio and the State of Kentucky have equal and concurrent jurisdiction over and on all of the Ohio River from the northerly shore to the southerly shore, except jurisdiction incidental to the sovereignty of the soil under the river and structures permanently attached thereto.

That further, the State of Kentucky be permanently enjoined and restrained from disturbing the State of Ohio and its citizens in the peaceful enjoyment and use of said land, water, and jurisdiction inconsistent with the Court's decision.

Any further relief as may be granted by this Court.

The State of Ohio
by
JAMES A. RHODES,
Governor

WILLIAM B. SAXBE,
Attorney General of Ohio